

**AMENDMENTS TO MUNICIPAL GOVERNMENT**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Thomas V. Hatch**

---

---

**LONG TITLE**

**General Description:**

This bill modifies provisions of the Utah Municipal Code relating to municipal officers and employees.

**Highlighted Provisions:**

This bill:

- ▶ modifies the officers and employees of a municipality to whom certain provisions relating to the duration of employment and appeals from employment decisions apply;
- ▶ modifies the composition of an appeal board for employment decisions;
- ▶ modifies the process for appealing an action or decision of the appeal board;
- ▶ expands circumstances covered by provisions relating to limitations on taking negative employment action;
- ▶ requires rather than permits the appeal board to provide that an employee receive back salary if the board finds in favor of the employee; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**10-3-1105**, as enacted by Chapter 48, Laws of Utah 1977

**10-3-1106**, as enacted by Chapter 48, Laws of Utah 1977

---

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **10-3-1105** is amended to read:

**10-3-1105. Municipal employees -- Duration and termination of employment --**

**Exceptions.**

~~[All appointive officers and employees of municipalities, other than members of the police departments, fire departments, heads of departments, and superintendents,]~~

(1) Except as provided in Subsection (2), each employee of a municipality shall hold [their] employment without limitation of time, being subject to discharge [or dismissal only as hereinafter provided:], suspension of over two days without pay, or involuntary transfer to a position with less remuneration only as provided in Section 10-3-1106.

(2) Subsection (1) does not apply to:

(a) an officer appointed by the mayor or other person or body exercising executive power in the municipality;

(b) a member of the municipality's police department or fire department who is a member of the classified civil service in a first or second class city;

(c) a police chief of the municipality;

(d) a deputy police chief of the municipality;

(e) a fire chief of the municipality;

(f) a deputy or assistant fire chief of the municipality;

(g) a head of a municipal department;

(h) a deputy of a head of a municipal department;

(i) a superintendent;

(j) a probationary employee of the municipality;

(k) a part-time employee of the municipality; or

(l) a seasonal employee of the municipality.

(3) Nothing in this section or Section 10-3-1106 may be construed to limit a municipality's ability to define cause for an employee termination or reduction in force.

Section 2. Section **10-3-1106** is amended to read:

**10-3-1106. Discharge, suspension without pay, or involuntary transfer -- Appeals -- Board -- Procedure.**

(1) ~~[No officer or]~~ An employee [covered by] to which Section 10-3-1105 ~~[shall]~~ applies may not be discharged, suspended without pay, or involuntarily transferred to a position with less remuneration:

(a) because of ~~[his]~~ the employee's politics or religious belief~~[;]~~; or

(b) incident to, or through changes, either in the elective officers, governing body, or heads of departments. ~~[In all cases where any officer or]~~

(2) (a) If an employee is discharged, suspended for more than two days without pay, or involuntarily transferred from one position to another with less remuneration for any reason, [he shall have the right to] the employee may, subject to Subsection (2)(b), appeal the discharge, suspension without pay, or involuntary transfer to a board to be known as the appeal board [which shall consist of five members, three of whom shall be chosen by and from the appointive officers and employees, and two of whom shall be members of the governing body], established under Subsection (7).

(b) If the municipality provides an internal grievance procedure, the employee shall exhaust the employee's rights under that grievance procedure before appealing to the board.

~~[(2) The]~~ (3) (a) Each appeal under Subsection (2) shall be taken by filing written notice of the appeal with the municipal recorder within ten days after:

(i) if the municipality provides an internal grievance procedure, the employee receives notice of the final disposition of the municipality's internal grievance procedure; or

(ii) if the municipality does not provide an internal grievance procedure, the discharge, suspension, or involuntary transfer.

(b) (i) Upon the filing of ~~[the]~~ an appeal under Subsection (3)(a), the [city] municipal recorder shall forthwith refer a copy of the [same] appeal to the appeal board.

(ii) Upon receipt of the referral from the municipal recorder, the appeal board shall forthwith commence its investigation, take and receive evidence, and fully hear and determine the

matter which relates to the cause for the discharge, suspension, or transfer.

~~[(3) The]~~ (4) An employee [shall be entitled to] who is the subject of the discharge, suspension, or transfer may:

- (a) appear in person and ~~[to]~~ be represented by counsel~~[-to]~~;
- (b) have a public hearing~~[-to]~~;
- (c) confront the witness whose testimony is to be considered~~[-]~~; and ~~[to]~~
- (d) examine the evidence to be considered by the appeal board.

~~[(4) In the event the appeal board upholds the discharge or transfer, the officer or employee may have 14 days thereafter to appeal to the governing body whose decision shall be final. In the event the appeal board does not uphold the discharge or transfer the case shall be closed and no further proceedings shall be had.]~~

(5) ~~[The]~~ (a) (i) Each decision of the appeal board shall be by secret ballot, and shall be certified to the recorder ~~[with]~~ within 15 days from the date the matter is referred to it~~[-The board may, in its decision,], except as provided in Subsection (5)(a)(ii).~~

(ii) For good cause, the board may extend the 15-day period under Subsection (5)(a)(i) to a maximum of 60 days, if the employee and municipality both consent.

(b) If it finds in favor of the employee, the board shall provide that [an] the employee shall receive [his]:

(i) the employee's salary for the period of time during which [he] the employee is discharged[-] or suspended without pay; or

(ii) any deficiency in salary for the period [he] during which the employee was transferred to a position of less remuneration [but not to exceed a 15-day period. In no case shall the appointive officer or employee be discharged or transferred, where an appeal is taken, except upon a concurrence of at least a majority of the membership of the governing body of the municipality].

~~[(6) In the event that the appeal board does not uphold the discharge, or transfer, the recorder shall certify the decision to the employee affected, and also to the head of the department from whose order the appeal was taken. The employee shall be paid his salary, commencing with~~

~~the next working day following the certification by the recorder of the appeal board's decision, provided that the employee, or officer, concerned reports for his assigned duties during that next working day.]~~

(6) (a) A final action or order of the appeal board may be appealed to the Court of Appeals by filing with that court a notice of appeal.

(b) Each notice of appeal under Subsection (6)(a) shall be filed within 30 days after the issuance of the final action or order of the appeal board.

(c) The Court of Appeals' review shall be on the record of the appeal board and for the purpose of determining if the appeal board abused its discretion or exceeded its authority.

(7) (a) The method and manner of choosing the members of the appeal board, [and] the number of members, the designation of their terms of office, and the procedure for conducting an appeal and the standard of review shall be prescribed by the governing body of each municipality by ordinance[~~, but the provisions for choosing the three members from the appointed officers and employees shall in no way restrict a free selection of members by the appointive officers and employees of the municipality~~].

(b) For a municipality operating under a form of government other than a council-mayor form under Part 12, Optional Forms of Municipal Government Act, an ordinance adopted under Subsection (7)(a) may provide that the governing body of the municipality shall serve as the appeal board.